

14. Does Mr. Rubin agree that §§ 1264 and 1265 of the EPAct of 2005 provide that both the FERC and state utility commissions can have access to the books and records of a holding company and its affiliates as necessary to investigate the costs incurred by a utility?

Answer:

Mr. Rubin agrees that sections 1264 and 1265 deal with the subject of FERC and state commission access to books and records of holding companies and certain affiliates of holding companies. In Mr. Rubin's opinion, however, those sections when read in conjunction with section 1266 (exemptions) fall short of ensuring that the relevant commissions will have the necessary access to fully investigate the costs incurred by a utility from the utility's affiliates. It also appears that the records of investigations conducted by FERC might not be available to state commissions due to the confidentiality provision in section 1264(d).

Responsible witness: Scott J. Rubin

15. If the answer to information request no. 14 is in the affirmative, does Mr. Rubin agree that this statute helps assure that non-power goods and services provided by a service company to a utility company are priced reasonably?

Answer:

No.

Responsible witness: Scott J. Rubin

16. Has Mr. Rubin reviewed the FERC's rulemaking on reporting practices for utilities and holding company affiliates (RM05-32-000)?

Answer:

Yes, Mr. Rubin has reviewed FERC's Notice of Proposed Rulemaking that was issued on September 16, 2005.

Responsible witness: Scott J. Rubin

17. If the answer to the preceding information request is in the affirmative, please state whether the stated purpose of this rulemaking is to develop rules relating to reporting to FERC various aspects of utilities' and holding companies' operations, financial condition, and/or affiliate transactions.

Answer:

The proposed regulation speaks for itself, but generally the answer to the question is yes.

Responsible witness: Scott J. Rubin

18. If the answer to information request no. 17 is in the affirmative, did Mr. Rubin review the rulemaking on reporting practices for utilities and holding company affiliates prior to preparing his testimony in this proceeding?

Answer:

Yes.

Responsible witness: Scott J. Rubin

19. Did Mr. Rubin review the testimony of Mr. Thomas J. Flaherty on behalf of Joint Applicants prior to preparing his testimony?

Answer:

Yes.

Responsible witness: Scott J. Rubin

20. Does Mr. Rubin agree that Mr. Flaherty estimates the following:
- (a.) \$2.1 billion in gross merger savings over the first five years following the merger (Flaherty testimony at p. 8, lines 7-10);
 - (b.) the level of gross merger savings by the end of the five-year period is \$509 million annually (Flaherty testimony at p. 7, Table 1, "Total Gross Savings" for Year 5);
 - (c.) the level of gross merger savings by the end of the five-year period is representative of the level of ongoing savings and can be used as a reasonable determination of both annual and cumulative savings (Flaherty testimony at p. 19, lines 1-3);

Answer:

Yes, Mr. Rubin agrees that these estimates and statements appear in Mr. Flaherty's testimony.

Responsible witness: Scott J. Rubin

21. Does Mr. Rubin agree that, based on Mr. Flaherty's testimony as set forth in information request no. 20, the gross merger savings for years six through ten are projected at \$2.545 billion (\$509 million annually, identified in sub-part (b), above, times five years?

Answer:

No. The Office of the Attorney General asked the Applicants to provide ten-year projections of costs and savings and the Applicants refused to provide one. (Applicants' responses to AG 1.2 and 1.3.) Further, in response to AG 1.2(n), Mr. Flaherty stated that "cost savings generally continue to escalate into future periods while the cost-to-achieve generally decline to a low continuing level to reflect annual costs." It does not appear, therefore, that Mr. Flaherty believes that savings will remain constant in years six through ten. Moreover, Mr. Rubin cannot verify any projections for years six through ten because the Applicants refused to provide an analysis covering that time period, even though it appears that they prepared such an analysis at least as early as May 2005.

Responsible witness: Scott J. Rubin

22. Does Mr. Rubin agree that, based on Mr. Flaherty's testimony as set forth in information request nos. 19 and 20, the ten-year gross merger savings are projected at approximately \$4.6 billion (\$2.1 billion for the first five years, plus \$2.545 billion for years six through ten)?

Answer:

No, see response to question 21.

Responsible witness: Scott J. Rubin

23. Does Mr. Rubin agree that the gross merger savings of approximately \$4.6 billion over ten years supported by Mr. Flaherty's testimony and as set forth in information request nos. 20-22 are roughly equal to the \$4.6 billion in gross merger savings over ten years discussed in the Duke Board minutes and the "synergy study" referred to at page 14, lines 3-15 of Mr. Rubin's testimony?

Answer:

Yes, as discussed Mr. Rubin's Supplemental Direct Testimony, with the caveat noted in response to question 21.

Responsible witness: Scott J. Rubin

24. Does Mr. Rubin agree that the “synergy study” referred to beginning at page 14 of his testimony was filed by Joint Applicants in this proceeding on or about September 30, 2005?

Answer:

No. Mr. Rubin agrees that the presentation to Duke’s Board of Directors from May 2005 was provided on or about September 30, 2005. That document, however, is not a study. It would be more accurately characterized as a summary of a study. The Applicants indicated that there were no workpapers associated with that presentation that had not already been provided. As Mr. Rubin discusses in his Supplemental Direct Testimony, however, there is some information that appears in the May 2005 presentation that cannot be derived from, or is inconsistent with, the study that was provided in this case. Further, as discussed in response to question 21, the May 2005 presentation refers to a ten-year analysis of synergy savings, while the workpapers and interrogatory responses from the Applicants in this case only cover five years.

Responsible witness: Scott J. Rubin

25. Does Mr. Rubin agree that the “synergy study” supports merger savings that are comparable to the level of merger savings that they have stated publicly and that they provided in the record of this case prior to September 30, 2005?

Answer:

Mr. Rubin agrees that the level of gross merger savings in the May 2005 presentation is consistent with the level of gross merger savings that the Applicants have stated publicly and that they provided in this case prior to September 30, 2005. Mr. Rubin does not agree that the allocation of those savings between regulated and unregulated operations is the same, as he discusses in his Supplemental Direct Testimony. See also the responses to questions 21-24.

Responsible witness: Scott J. Rubin

26. If the answer to information request no. 25 is in the affirmative, does Mr. Rubin agree that Duke has “honestly provided relevant information in a truthful manner” on this point, and that his suggestion at page 15, lines 3-17 to the contrary is unfounded?

Answer:

No, see the Supplemental Direct Testimony of Mr. Rubin and the responses to questions 21 and 24.

Responsible witness: Scott J. Rubin

27. If the answer to information request no. 25 is in the affirmative, does Mr. Rubin agree that Duke has the financial, managerial and technical abilities to ensure that ULH&P continues to provide adequate and reliable service, and that the transfer is being made for a proper purpose and is otherwise consistent with the public interest?

Answer:

No, see the Supplemental Direct Testimony of Mr. Rubin.

Responsible witness: Scott J. Rubin

28. Has the Attorney General ever asserted any claim of attorney-client privilege in a legal proceeding to which he has been a party?

Answer:

The Attorney General objects. The information sought does not appear reasonably calculated to lead to the discovery of admissible evidence.

Responsible witness: Office of the Attorney General

29. Mr. Rubin recommends in Condition No. 1 that the Commission should require ULH&P to fully disclose all uses of ULH&P personnel, assets and equipment for any unregulated purposes, including the fully allocated cost of such personnel, assets and equipment. Does Mr. Rubin agree that, to the extent ULH&P is required to file a cost allocation manual, this type of information is required under KRS 278.2205?

Answer:

No, section 278.2205 does not appear to require the disclosure of all uses of utility personnel, assets, and equipment. It appears to require the preparation of a cost allocation manual and a general description of unregulated activities. Further, if the Commission does not adopt Condition No. 1, making it a part of a Commission order, ULH&P would be able to request a waiver of section 278.2205 (see section 278.2219).

Responsible witness: Scott J. Rubin

30. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware prior to preparing his testimony that this type of information is required under KRS 278.2205?

Answer:

Not applicable, but Mr. Rubin had reviewed KRS 278.2205 before preparing his testimony.

Responsible witness: Scott J. Rubin

31. Is Mr. Rubin aware that ULH&P files annual reports with the Commission which provide information about ULH&P's cost allocation methodologies?

Answer:

No, Mr. Rubin does not know all of the types of reports ULH&P files with the Commission.

Responsible witness: Scott J. Rubin

32. Is Mr. Rubin aware that, under the proposed Service Company Utility Service Agreement between ULH&P and Duke Energy Shared Services, LLC, ULH&P would request services from Duke Energy Shared Services through written service requests which would document the type of service and the estimated cost, and which would be available for review by the Commission and other stakeholders in rate proceedings?

Answer:

No, Mr. Rubin does not agree that this requirement is contained in the proposed Service Company Utility Service Agreement. Such a provision does appear in the proposed Operating Companies Service Agreement (the agreement among the operating utilities only), but not in the agreement with Duke Energy Shared Services.

Responsible witness: Scott J. Rubin

33. Mr. Rubin recommends in Condition No. 2 that the Commission should require ULH&P to obtain a CPCN prior to the sale or transfer of land, regardless of value. Is Mr. Rubin aware of any other utility which is required to do so?

Answer:

Mr. Rubin has not researched this question.

Responsible witness: Scott J. Rubin



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34. If the answer to the preceding information request is in the affirmative, please identify the utility and provide a copy of the statute, rule, or commission order which imposed such requirement.

Answer:

Not applicable.

Responsible witness: Scott J. Rubin

35. Is Mr. Rubin aware that KRS 278.218 requires Commission approval prior to the sale of utility assets with original book value in excess of \$1 million dollars, under certain circumstances?

Answer:

Yes.

Responsible witness: Scott J. Rubin

36. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware of this requirement prior to preparing his testimony?

Answer:

Yes.

Responsible witness: Scott J. Rubin

37. Mr. Rubin recommends in Condition No. 3 that ULH&P from should be prohibited from including in rates any portion of the acquisition premium or goodwill related to the merger. Is Mr. Rubin aware that Joint Applicants have already committed to this in Item Nos. 3 and 4 of Attachment GCF-1 to Mr. Ficke's testimony?

Answer:

Yes.

Responsible witness: Scott J. Rubin

38. If the answer to the preceding information request is in the affirmative, was Mr. Rubin aware of this commitment prior to preparing his testimony?

Answer:

Yes.

Responsible witness: Scott J. Rubin